

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

T.F. WARREN GROUP, INC.,
VANGUARD SHIPPING (GREAT
LAKES) LTD., VANSHIP LTD.,
REMSTOAN INVESTMENTS, INC.,
8219222 CANADA, INC., o/a PHOENIX
STAR SHIPPING, and PHOENIX SUN
SHIPPING INC.,

Plaintiff(s),

v.

MARCON INTERNATIONAL, INC.,
BRIAN K. PETERSON and JANE DOE
PETERSON, husband and wife, and the
marital community composed thereof,

Defendant(s).

NO.

COMPLAINT

(Clerk's Action Required)

COMPLAINT

Plaintiffs, T.F. Warren Group, Inc. ("Warren"), Vanguard Shipping (Great Lakes)
Ltd. ("Vanguard"), Vanship Ltd. ("Vanship"), Remstoan Investments Inc. ("Remstoan"),
8219222 Canada Inc. operating as Phoenix Star Shipping ("Phoenix Star"), and Phoenix

COMPLAINT - 1
10644-0002 5297549.doc
Cause No.

PREG O'DONNELL & GILLET PLLC

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SEATTLE, WASHINGTON 98164-2026
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1 Sun Shipping Inc. ("Phoenix Sun")(collectively, "Plaintiffs"), by and through their New
2 York counsel, Kavinoky Cook LLP, and local counsel Rodney Q. Fonda of Preg,
3 O'Donnell & Gillett, for their Complaint against Defendants, Marcon International, Inc.
4 ("Marcon"), Brian K. Peterson, and Jane Doe Peterson ("Peterson")(collectively,
5 "Defendants"), state and allege as follows:

6
7 **PARTIES**

8 1. Plaintiff Warren was at all times mentioned a corporation organized and
9 existing under the laws of Ontario, Canada, having at all material times a principal place
10 of business at Brantford, Ontario, Canada.

11 2. Plaintiff Vanguard was at all times mentioned a corporation organized and
12 existing under the laws of Canada, having at all material times a principal place of
13 business at St. Catharines, Ontario, Canada. Plaintiff Vanguard is an affiliate of Plaintiff
14 Warren.

15 3. Plaintiff Vanship was at all times mentioned a corporation organized and
16 existing under the laws of Canada, having at all material times a principal place of
17 business at St. Catharines, Ontario, Canada. Plaintiff Vanship is an affiliate of Plaintiff
18 Warren.

19 4. Plaintiff Remstoan was at all times mentioned a corporation organized and
20 existing under the laws of the Province of Ontario, Canada, having a principal place of
21 business at Brantford, Ontario, Canada. Plaintiff Remstoan is an affiliate of Plaintiff
22 Warren.
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1 5. Plaintiff Phoenix Star was at all times mentioned a corporation organized
2 and existing under the laws of Canada, having a principal place of business at
3 Brantford, Ontario, Canada. Plaintiff Phoenix Star is an affiliate of Plaintiff Warren.

4 6. Plaintiff Phoenix Sun was at all times mentioned a corporation organized
5 and existing under the laws of Canada, having a principal place of business at
6 Brantford, Ontario, Canada. Plaintiff Phoenix Sun is an affiliate of Plaintiff Warren.

7 7. Upon information and belief, Defendant Marcon, is and was at all times
8 mentioned a corporation organized and existing under the laws of the State of
9 Washington, having a principal place of business in Coupeville, Washington.

10 8. Upon information and belief, Defendant Brian Peterson, and his spouse, if
11 any, are and were at all times mentioned residing within the State of Washington. If
12 married, the Peterson defendants comprised a marital community pursuant to the laws
13 of the State of Washington. All acts and omissions of defendant Brian Peterson were
14 done on behalf of and for the benefit of the marital community.

15 9. Upon information and belief, Defendant Brian Peterson, is and was at all
16 times mentioned a broker employed, affiliated and/or associated with Defendant
17 Marcon.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a)(2), as there is diversity of citizenship between Plaintiffs, citizens of a foreign state, and Defendants, citizens of a different state, and the amount in controversy exceeds the sum of \$75,000.00.

11. This Court has personal jurisdiction over Defendants as Defendants are residents of the State of Washington, within the confines of the Western District of Washington, and are and have been engaged in a continuous and systematic course of business in the State of Washington, within the confines of the Western District of Washington.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and § 1391(b)(2) as Defendants reside in the Western District of Washington, and because the events, acts and omissions giving rise to the claims occurred in the Western District of Washington.

I. FACTS

PLAINTIFF VANGUARD'S ACQUISITION OF THE J.W. SHELLEY
(F/K/A VALGOCEN ALMIRANTE)

13. In 2008, Plaintiff Vanguard was formed for the purpose of owning and operating a vessel to engage in a Great Lakes shipping venture with one of the oldest and largest grain brokerages in the world.

14. To engage in such shipping venture, Plaintiff Vanguard contemplated the purchase of a bulk carrier vessel named the S/S VALGOCEN ALMIRANTE.

1 15. At the time, the vessel had been in lay-up status since a prior sale, and
2 Plaintiff Vanguard was advised that it would need to undertake certain actions to utilize
3 the vessel in the Great Lakes shipping venture, including, but not limited to, re-
4 classification and re-registration.

5 16. As part of the due diligence process, representatives of Plaintiff Vanguard
6 engaged Defendant Marcon, an international broker of marine vessels and barges, to
7 prepare "a written report providing an opinion of the Fair Market Value (FMV), and
8 Orderly Liquidation Value (OLV) for the subject vessel ... on an "as is, where is" basis,
9 as well as on the basis of her being completely rebuilt and re-classed with Lloyd's
10 Registry and registered under the Canadian Registry for continue/dedicated
11 employment in the grain market of the Canadian Great Lakes and St. Lawrence Seaway
12 system."
13

14 17. Defendant Peterson, a vessel broker, was assigned to perform the
15 requested valuation on behalf of Defendant Marcon.
16

17 18. According to information provided by Defendant Peterson to Plaintiff
18 Vanguard, Defendant Peterson had over twenty (20) years of employment as a USCG
19 Licensed Mariner, Shipping Agent, and a vessel broker.

20 19. Based on this information provided to Plaintiff Vanguard by Defendant
21 Peterson, Plaintiff Vanguard reasonably believed Defendant Peterson to be highly
22 qualified and knowledgeable about the commercial marine industry, specifically
23 regarding the vessel and market values.
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1 20. On or about May 9, 2008, Defendants delivered a written report entitled
2 "Market Valuation Appraisal" for the VALGOCEN ALMIRANTE to representatives of
3 Plaintiff Vanguard (the "May 2008 Appraisal").

4 21. The May 2008 Appraisal stated that Defendant Marcon was familiar with
5 the vessel having reviewed a recent survey prepared by Bud Fraser of The Salvage
6 Association and certain documents related to the acquisition of the vessel, as well as by
7 having conducted two on-site physical inspections of the vessel, once in February 2008
8 and again on May 6, 2008.

9 22. The May 2008 Appraisal further stated that Defendant Marcon was
10 familiar with the vessel by publicly available information in the market, and by Defendant
11 Marcon's general activity in the sale and purchase market of second hand commercial
12 marine tonnage.

13 23. Based on review of the material provided and information gathered from
14 various sources in the industry, Defendant Peterson prepared two valuations of the
15 VALGOCEN ALMIRANTE.

16 24. Defendant Peterson's first valuation of the vessel was based on an "as is,
17 where is" sale of the asset without any further work on the vessel: FMV USD
18 \$4,400,000.00 and OLV USD \$2,700,000.00.

19 25. Defendant Peterson's second valuation of the vessel took into account
20 the estimated costs to refurbish, re-classify and re-register the vessel so that it was fully
21 operational in the Great Lakes and Seaway market: FMV USD \$14,800,000.00 and
22 OLV USD \$12,580,000.00.

1 26. In reliance on the May 2008 Appraisal prepared by Defendants and
2 Defendants' valuation of the vessel, Plaintiff Vanguard proceeded with the purchase of
3 the VALGOCEN ALMIRANTE.

4 27. Upon Plaintiff Vanguard's acquisition of the vessel VALGOCEN
5 ALMIRANTE, it was re-named the J.W. SHELLEY.

6 28. After the purchase of the vessel, Plaintiff Vanguard undertook and
7 completed the required work to refurbish the vessel, re-classify and re-register the
8 vessel.
9

10 29. In February 2009, as a result of the significant refurbishment of the vessel
11 and changing market conditions in the commercial marine industry, Plaintiff Vanguard
12 engaged Defendant Marcon to prepare an updated "written report providing an opinion
13 of the Fair Market Value (FMV), and Orderly Liquidation Value (OLV) for the subject
14 vessel J.W. SHELLEY for today's date on an "as is, where is" basis."
15

16 30. As of February, 2009, the vessel was registered under the Canadian
17 Registry and in dedicated employment in the grain market of the Canadian Great Lakes
18 and St. Lawrence Seaway system.

19 31. Once again, Defendant Peterson, a vessel broker, was assigned to
20 perform the requested valuation on behalf of Defendant Marcon.

21 32. On or about February 9, 2009, Defendants delivered a written report
22 entitled "Market Valuation Appraisal" for the J.W. SHELLEY to representatives of
23 Plaintiff Vanguard (the "February 2009 Appraisal").
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1 33. The February 2009 Appraisal stated that Defendant Marcon was familiar
2 with the vessel having previously reviewed the vessel in May 2008 and having given an
3 opinion as to valuation at the time.

4 34. The February 2009 Appraisal further stated that Defendant Marcon was
5 asked to review the vessel on a “desk top appraisal basis, at this time, taking into
6 account her current position (currently trading with present certification in place, etc.),
7 but also taking into account the current market trading conditions in place today, versus
8 the market conditions which were in place when we conducted the appraisal of the
9 vessel in May 2008.”

10 35. The February 2009 Appraisal discussed in detail the general collapse of
11 the bulk vessel market during the fourth quarter of 2008, and the effect that this overall
12 collapse had on the market value of bulk ships world-wide.

13 36. Based on review of the material provided and information gathered from
14 various sources in the industry, Defendant Peterson prepared a valuation of the J.W.
15 SHELLEY.

16 37. Defendant Peterson’s valuation of the vessel J.W. SHELLEY as of
17 February, 2009 was: FMV USD \$9,500,000.00 and OLV USD \$8,075,000.00.

18 **PLAINTIFF REMSTOAN’S INVESTMENT IN PLAINTIFF VANGUARD**

19 38. In early 2009, Plaintiff Vanguard approached representatives of Plaintiff
20 Remstoan about the possibility of investing in the Great Lakes shipping venture.

21 39. As part of the due diligence process, representatives of Plaintiff Remstoan
22 reviewed information provided by Plaintiff Vanguard regarding the shipping venture and
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1 the J.W. SHELLEY, including, but not limited to, the market appraisal reports prepared
2 by Defendant Marcon.

3 40. In reliance on Defendants' valuation of the vessel as of February, 2009,
4 Plaintiff Remstoan proceeded to invest in Plaintiff Vanguard, acquiring a twenty-five
5 percent (25%) interest in the company.
6

7 41. In late 2010, representatives of Plaintiff Remstoan were approached by
8 one of the other owners of Plaintiff Vanguard about the possibility of purchasing an
9 additional ownership interest in the company.

10 42. Plaintiff Remstoan proceeded to engage in negotiations with the other
11 owner for the purchase of their twenty-five percent (25%) interest in Plaintiff Vanguard.

12 43. In continuing reliance on Defendants' valuation of the vessel J.W.
13 SHELLEY, Plaintiff Remstoan decided to proceed with the purchase of an additional
14 ownership interest in Plaintiff Vanguard.
15

16 44. By the end of 2010, Plaintiff Remstoan was a fifty percent (50%) owner of
17 Plaintiff Vanguard.

18 **FORMATION OF PLAINTIFF VANSHIP TO ENGAGE IN SECOND SHIPPING**
19 **VENTURE**

20 45. In early 2011, Plaintiff Vanguard was approached by another major
21 worldwide grain brokerage concerning the possibility of purchasing a second vessel to
22 be dedicated to the transportation of grain on an exclusive basis.

23 46. Following a number of months of negotiations, a deal was made with the
24 grain brokerage, and representatives of Plaintiff Vanguard began searching for a
25 second vessel to purchase.

1 47. In 2011, Plaintiff Vanship was formed by the owners of Plaintiff Vanguard
2 for the purpose of owning and operating the second vessel.

3 48. Plaintiff Remstoan owned a fifty percent (50%) interest in Plaintiff Vanship.

4 **PLAINTIFF VANSHIP'S ACQUISITION OF**
5 **THE VSL CENTURION**
6 **(F/K/M.V. BESTSTAR)**

7 49. Plaintiff Vanguard/Plaintiff Vanship located a target vessel of the type
8 required for Great Lakes grain shipping in China.

9 50. The parties engaged in negotiations for the purchase of the vessel, known
10 as M.V. BESTSTAR and a closing date was scheduled for July 31, 2011.

11 51. As part of the due diligence process, representatives of Plaintiff
12 Vanguard/Plaintiff Vanship engaged a marine surveying firm, Standard Marine
13 Surveyors and Adjusters (Tianjin) Co. Ltd. ("Standard Marine"), to attend upon the
14 vessel in China with Plaintiff's personnel to prepare a report on the condition of the
15 vessel.
16

17 52. As part of the due diligence process, representatives of Plaintiff
18 Vanguard/Plaintiff Vanship also engaged Defendant Marcon to prepare "a written report
19 providing an opinion of the Fair Market Value (FMV) for the subject vessel ... on an "as
20 is, where is" basis."
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22 53. Once again, Defendant Peterson, a vessel broker, was assigned to
23 perform the requested valuation on behalf of Defendant Marcon.
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1 54. Plaintiff Vanguard/Plaintiff Vanship provided Defendants with the
2 information obtained from Standard Marine to consider when preparing the appraisal of
3 the vessel.

4 55. On or about March 15, 2011, Defendants delivered a written report entitled
5 "Market Valuation Appraisal" for the BESTSTAR to representatives of Plaintiff
6 Vanguard/Plaintiff Vanship (the "March 2011 Appraisal").
7

8 56. The March 2011 Appraisal stated that Defendant Marcon was familiar with
9 the vessel having reviewed the survey material provided by Plaintiff Vanguard/Plaintiff
10 Vanship, including, a recent marine condition survey report undertaken by Standard
11 Marine on March 6, 2011.

12 57. The March 2011 Appraisal further stated that Defendant Marcon was
13 familiar with the vessel by publicly available information in the market, and by Defendant
14 Marcon's general activity in the sale and purchase market of second hand commercial
15 marine tonnage.
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17 58. Based on review of the material provided and information gathered from
18 various sources in the industry, Defendant Peterson prepared a valuation of the
19 BESTSTAR.

20 59. Defendant Peterson's valuation of the vessel BESTSTAR was: FMV USD
21 \$6,000,000.00.
22

23 60. In reliance on the March 2011 Appraisal prepared by Defendants and
24 Defendants' valuation of the vessel, Plaintiff Vanship proceeded with the purchase of
25 the BESTSTAR.

1 61. Upon Plaintiff Vanship's acquisition of the vessel, it was re-named the VSL
2 CENTURION.

3 **BANKRUPTCY OF PLAINTIFF VANGUARD AND**
4 **PLAINTIFF VANSHP UNDER THE COMPANIES CREDITORS ARRANGEMENT ACT**
5 **OF CANADA**

6 62. Plaintiff Remstoan's investment in the shipping ventures was intended to
7 be a passive investment and by the fall of 2011 it was consuming too much
8 management time and effort, so Plaintiff Remstoan determined to sell its interest in both
9 Vanguard and Vanship.

10 63. From October 2011 to March 2012, Plaintiff Remstoan engaged in
11 discussions with the other owner of Plaintiff Vanguard and Plaintiff Vanship about the
12 possibility of such owner purchasing Plaintiff Remstoan's fifty percent (50%) interest in
13 each company.

14 64. On or about March 22, 2012, Plaintiff Vanguard and Plaintiff Vanship filed
15 for bankruptcy under the Companies Creditors Arrangement Act of Canada ("CCAA").
16 During the course of the CCAA process, Plaintiff Warren arranged for debtor in
17 possession financing for both companies.

18 65. Plaintiff Warren believed that if some of the financial burden was relieved,
19 both vessels J.W. SHELLEY and VSL CENTURION could be operated profitably under
20 the existing grain brokerage contracts, especially because Plaintiff Warren spent in
21 excess of \$1,000,000.00 in repairs and upgrades to both vessels prior to the CCAA
22 process.
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1 66. Based on the Defendants' valuation of each vessel, Plaintiff Warren
2 reasonably believed that there remained sufficient equity in the vessels to support
3 Plaintiffs' continued investment.

4 67. Plaintiff Warren formed two separate entities for the purpose of owning
5 and operating the vessels, Plaintiff Phoenix Star and Plaintiff Phoenix Sun.

6
7 68. In reliance on the appraisal reports prepared by Defendants, Plaintiffs
8 Phoenix Sun and Phoenix Star made offers to purchase the two vessels out of the
9 CCAA process, and were ultimately successful.

10 **PLAINTIFF PHOENIX STAR'S ACQUISITION OF THE**
11 **PHOENIX STAR (F/K/A J.W. SHELLEY)**

12 69. In August 2012, Plaintiff Phoenix Star acquired the J.W. SHELLEY for the
13 price of \$11,400,000.00.

14 70. Upon Plaintiff Phoenix Star's acquisition of the vessel, it was re-named
15 again as the PHOENIX STAR.

16 71. Due to the length of time of the sale process, the PHOENIX STAR did not
17 begin operations until mid-August 2012, thereby missing half of the shipping season,
18 but was in operation until the close of the St. Lawrence Seaway for the season.

19 72. During this time, the PHOENIX STAR operated in accordance with Plaintiff
20 Phoenix Star's business plan, and was profitable.

21 **PLAINTIFF PHOENIX SUN'S ACQUISITION OF THE**
22 **PHOENIX SUN (F/K/A VSL CENTURION)**

23
24 73. In August 2012, Plaintiff Phoenix Sun acquired the VSL CENTURION for
25 the price of \$8,500,000.00.

1 74. Upon Plaintiff Phoenix Sun's acquisition of the vessel, it was renamed the
2 PHOENIX SUN.

3 75. Due to the length of time of the sale process and certain mechanical
4 issues, the PHOENIX SUN did not begin operations until October 2012, and the
5 operation of the vessel was unreliable.

6 76. During this time, the PHOENIX SUN did not operate in accordance with
7 Plaintiff Phoenix Sun's business plan, and was not profitable for 2012.

8
9 **PLAINTIFF PHOENIX STAR'S DISCOVERY OF DEFENDANTS' SIGNIFICANT**
10 **OVERVALUATION OF THE VESSEL PHOENIX STAR**

11 77. During 2012, Plaintiff Phoenix Star invested a total of \$1,845,646.00 to
12 complete steel and mechanical work to the vessel PHOENIX STAR.

13 78. On or about October 16, 2012, during one of its runs from Quebec City
14 into the Upper Lakes, the PHOENIX STAR struck bottom in the St. Lawrence River.
15 While the hull was not breached in the incident, there was substantial damage done to
16 the vessel.

17 79. Plaintiff Phoenix Star arranged for underwater surveys of the vessel, and it
18 was estimated that the damages to the vessel ranged from \$650,000.00 to
19 \$800,000.00.

20 80. After repairs were completed, the Phoenix Sun was released to sail.

21 81. Thereafter, the vessel experienced leaks and the decision was made by
22 Plaintiff Phoenix Star to put the vessel in drydock.
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1 82. On or about December 21, 2012, the PHOENIX STAR arrived at the
2 Toledo shipyard of Ironhead Marine, and on December 23, 2012, the vessel was put in
3 drydock due to leaking issues.

4 83. While in drydock in early 2013, a new survey of the ship was undertaken
5 and the estimate to repair the damages related to the accident and further work
6 unrelated to the accident to bring the vessel to full compliance with Lloyd's Registry
7 standards exceeded \$10,000,000.00, approximately half of which would have had to
8 have been spent during the 2013 winter layup.
9

10 84. This information was shocking to Plaintiff Phoenix Star, given the
11 Defendants' valuation of the vessel contained in the May 2008 Appraisal and the
12 February 2009 Appraisal.

13 85. It was at this time that Plaintiff Phoenix Star discovered that Defendants
14 had significantly overvalued the vessel PHOENIX STAR.
15

16 **PLAINTIFF PHOENIX SUN'S DISCOVERY OF DEFENDANTS' SIGNIFICANT**
17 **OVERVALUATION OF THE PHOENIX SUN**

18 86. During 2012, Plaintiff Phoenix Sun invested a total of \$2,499,813.00 to
19 complete mechanical and electrical improvements to the PHOENIX SUN.

20 87. After discovery of the significant damage to the PHOENIX STAR, Plaintiff
21 Phoenix Sun decided to undertake a complete survey of the PHOENIX SUN.

22 88. Although it was not necessary to put the PHOENIX SUN in drydock, a
23 survey of the vessel was undertaken in 2013 and it was estimated that an expenditure
24 of an amount similar to that required for PHOENIX STAR would be necessary to bring
25 the vessel up to applicable standards.

1 89. This information was shocking to Plaintiff Phoenix Sun, given the
2 Defendants' valuation of the vessel contained in the March 2011 Appraisal.

3 90. It was at this time that Plaintiff Phoenix Sun discovered that Defendants
4 had significantly overvalued the vessel PHOENIX SUN.

5 **PLAINTIFF PHOENIX STAR'S AND PLAINTIFF PHOENIX SUN'S**
6 **SALE OF THE VESSELS AT A SIGNIFICANT LOSS**

7 91. Looking at a combined capital expenditure of approximately \$20.0 million
8 to keep both vessels in compliance with applicable standards, the decision was made
9 by Plaintiffs Phoenix Star and Phoenix Sun to exit the shipping industry.

10 92. Despite their best efforts in early 2013, Plaintiffs Phoenix Star and
11 Phoenix Sun were unable to locate purchasers for the vessels.

12 93. In March 2013, both Plaintiffs Phoenix Star and Phoenix Sun were placed
13 in receivership, and the court-appointed receiver initiated the process to sell the
14 vessels.

15 94. In May 2013, the sale of the vessels was approved.

16 95. Despite the fair market values determined by Defendants in the appraisal
17 reports (FMV \$14,800,000.00 in the May 2008 Appraisal and FMV \$9,500,000.00 in the
18 February 2009 Appraisal), the PHOENIX STAR sold significantly below the Defendants'
19 valuations.

20 96. The PHOENIX STAR was sold to Ironhead Marine, Inc. for the purchase
21 price of \$790,865.00.

1 97. Despite the fair market value determined by Defendants in the appraisal
2 report (FMV \$6,000,000.00 in the March 2011 Appraisal), the PHOENIX SUN sold
3 significantly below the Defendants' valuation.

4 98. The PHOENIX SUN was sold to Goldrich Waters International Shipping
5 Co. Ltd. for the purchase price of \$1,050,000.00.

6 99. As a result of the Defendants' significant overvaluation of the subject
7 vessels, Plaintiffs sustained significant losses on the sale of the vessels.
8

9 **COUNT I**

10 **BREACH OF CONTRACT**

11 **(MAY 2008 APPRAISAL AND FEBRUARY**
12 **2009 APPRAISAL OF THE PHOENIX STAR)**

13 100. Plaintiffs repeat and reallege as though fully set forth herein each of the
14 allegations set forth in paragraphs 1 through 100.

15 101. In 2008, Plaintiff Vanguard was formed for the purpose of owning and
16 operating a vessel for a new grain brokerage deal.

17 102. In early 2008, prior to the purchase of the vessel now known as the
18 PHOENIX STAR, Plaintiff Vanguard engaged Defendants to prepare a written report on
19 the valuation of the vessel.
20

21 103. In accordance with the parties agreement, Defendants prepared and
22 delivered a written report, the May 2008 Appraisal, to Plaintiff Vanguard, which
23 contained two valuations of the PHOENIX STAR.

24 104. Based on the detailed information contained in the appraisal report and
25 Defendant Peterson's representations to Plaintiff Vanguard that he was highly qualified

1 and knowledgeable about the commercial marine industry, specifically regarding the
2 vessel and market values, Plaintiff Vanguard reasonably believed Defendants'
3 representations as to the valuation of the vessel to be true, and in justifiable reliance
4 thereon Plaintiff Vanguard purchased the PHOENIX STAR for the agreed upon
5 purchase price.

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7 105. After the purchase of the vessel, Plaintiff Vanguard undertook renovations
8 to re-classify and re-register the vessel.

9 106. As a result of the significant renovations and changing market conditions,
10 Plaintiff Vanguard engaged Defendants to prepare a written report on the valuation of
11 the vessel as of February 2009.

12 107. In accordance with the parties agreement, Defendants prepared and
13 delivered a written report, the February 2009 Appraisal, to Plaintiff Vanguard, which
14 contained a valuation of the PHOENIX STAR.

15 108. Based on the detailed information contained in the appraisal report and
16 Defendant Peterson's representations to Plaintiff Vanguard that he was highly qualified
17 and knowledgeable about the commercial marine industry, specifically regarding the
18 vessel and market values, Plaintiff Vanguard reasonably believed Defendants'
19 representations as to the valuation of the vessel to be true.
20

21 109. In 2009, Plaintiff Remstoan purchased an ownership interest in Plaintiff
22 Vanguard, in reliance on the May 2008 Appraisal and February 2009 Appraisal
23 prepared by Defendants for Vanguard.
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1 110. In late 2010, Plaintiff Remstoan purchased an additional ownership
2 interest in Plaintiff Vanguard, in continuing reliance on Defendants' valuation of the
3 vessel now known as PHOENIX STAR made to Vanguard.

4 111. By the end of 2010, Plaintiff Remstoan was a fifty percent (50%) owner of
5 Plaintiff Vanguard.

6 112. In March 2012, Plaintiff Vanguard filed for bankruptcy protection.

7 113. During the course of the bankruptcy protection process, Plaintiff Warren
8 arranged for debtor in possession financing for the company.

9 114. Plaintiff Warren believed that if some of the financial burden was relieved,
10 the shipping vessel could be operated profitably under the existing grain brokerage
11 contract.

12 115. Based on the Defendants' valuation of the PHOENIX STAR, Plaintiff
13 Warren reasonably believed that there remained sufficient equity in the vessel to
14 support Plaintiffs' continued investment.

15 116. In reliance on the appraisal reports prepared by Defendants, Plaintiff
16 PHOENIX STAR made an offer to purchase the PHOENIX STAR out of bankruptcy.

17 117. In August 2012, Plaintiff Phoenix Star acquired the PHOENIX STAR for
18 the price of \$11,400,000.00.

19 118. Thereafter, in October 2012, the PHOENIX STAR ran aground, and as a
20 result of continuing leaking issues, Plaintiff Phoenix Star arranged to have the vessel
21 put in drydock in December 2012.
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1 119. At that time, a complete survey of the ship was undertaken and the
2 estimate to repair leaks and bring the vessel back to the applicable standards exceeded
3 \$10,000,000.00.

4 120. This information was shocking to Plaintiff Phoenix Star, given the
5 Defendants' valuation of the vessel contained in the March 2008 Appraisal and the
6 February 2009 Appraisal.
7

8 121. It was at that time that Plaintiff Phoenix Star discovered that Defendants'
9 valuation of the vessel PHOENIX STAR was significantly overvalued.

10 122. In March 2013, Plaintiff Phoenix Star was placed in receivership, and the
11 vessel sold for the purchase price of \$790,865.00.

12 123. Despite the values determined by Defendants in the appraisal reports
13 (FMV \$14,800,000.00 in the May 2008 Appraisal and FMV \$9,500,000.00 in the
14 February 2009 Appraisal), the PHOENIX STAR sold significantly below the Defendants'
15 valuations.
16

17 124. As a result of the Defendants' significant overvaluation of the subject
18 vessel PHOENIX STAR, Plaintiff Phoenix Star sustained a significant loss.

19 125. At the time Defendants prepared the May 2008 Appraisal and the
20 February 2009 Appraisal, Defendants knew or should have known that their
21 representations regarding the value of the PHOENIX STAR were not true and correct in
22 all material respects.
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1 126. Based on the information provided by Defendants to Plaintiff Vanguard,
2 Plaintiff Vanguard did not have any reason to suspect that Defendants' representations
3 regarding the valuation of the vessel were not true and correct in all material respects.

4 127. As a result of Defendants' misrepresentations as to the valuation of the
5 vessel PHOENIX STAR, Plaintiff Warren, Plaintiff Vanguard, Plaintiff Remstoan, and
6 Plaintiff Phoenix Star overestimated the value of the vessel, and agreed to purchase the
7 vessel and/or invest a greater amount than they would have, had they known the true
8 value of the PHOENIX STAR.
9

10 128. Defendants breached the agreements with Plaintiff Vanguard by their
11 misrepresentations regarding the value of the PHOENIX STAR.

12 129. At all times relevant hereto, Plaintiff Vanguard complied with all terms and
13 conditions required under the parties' agreements.

14 130. As a direct and proximate result of Defendants' breach of the agreements,
15 Plaintiff Warren, Plaintiff Vanguard, Plaintiff Remstoan, and Plaintiff Phoenix Star have
16 been caused to incur significant costs, expenses and damages in excess of
17 \$10,000,000.00.
18

19 131. For the reasons described above, Defendants are liable to Plaintiff
20 Vanguard, Plaintiff Remstoan, and Plaintiff Phoenix Star in an amount to be proven at
21 trial but not less than \$10,000,000.00.
22

23 **COUNT II**

24 **BREACH OF CONTRACT**

25 **(MARCH 2011 APPRAISAL OF THE PHOENIX SUN)**

1 132. Plaintiffs repeat and reallege as though fully set forth herein each of the
2 allegations set forth in paragraphs 1 through 132.

3 133. In 2011, Plaintiff Vanguard formed a new entity, Plaintiff Vanship, for the
4 purpose of owning and operating a second vessel for a new grain brokerage deal.

5 134. Plaintiff Remstoan owned a fifty percent (50%) interest in Plaintiff Vanship.

6 135. In early 2011, prior to the purchase of the vessel now known as the
7 PHOENIX SUN, Plaintiff Vanguard/Plaintiff Vanship engaged Defendants to prepare a
8 written report on the valuation of the vessel.
9

10 136. In accordance with the parties agreement, Defendants prepared and
11 delivered a written report, the March 2011 Appraisal, to Plaintiff Vanguard/Plaintiff
12 Vanship, which contained a valuation of the vessel.

13 137. Based on the detailed information contained in the appraisal report and
14 Defendant Peterson's representations to Plaintiff Vanguard/Plaintiff Vanship that he was
15 highly qualified and knowledgeable about the commercial marine industry, specifically
16 regarding the vessel and market values, Plaintiff Vanguard/Plaintiff Vanship reasonably
17 believed Defendants' representations as to the valuation of the vessel to be true, and in
18 justifiable reliance thereon Plaintiff Vanship purchased the PHOENIX SUN for the
19 agreed upon purchase price.
20

21 138. In March 2012, Plaintiff Vanship filed for bankruptcy protection as a result
22 of financial hardships.

23 139. During the course of the bankruptcy protection process, Plaintiff Warren
24 arranged for debtor in possession financing for the company.
25

1 140. Plaintiff Warren believed that if some of the financial burden was relieved,
2 the shipping vessel could be operated profitably under the existing grain brokerage
3 contract.

4 141. Based on the Defendants' valuation of the PHOENIX SUN, Plaintiff
5 Warren reasonably believed that there remained sufficient equity in the vessel to
6 support Plaintiff's continued investment.
7

8 142. In reliance on the appraisal report prepared by Defendants, Plaintiff
9 Phoenix Sun made an offer to purchase the PHOENIX SUN in the CCAA proceeding.

10 143. In August 2012, Plaintiff Phoenix Sun acquired the PHOENIX SUN for the
11 price of \$8,500,000.00.

12 144. After Plaintiff Phoenix Star discovered the significant discrepancy between
13 the appraised value of the PHOENIX STAR and its actual value, Plaintiff Phoenix Sun
14 decided to undertake a complete survey of the PHOENIX SUN.
15

16 145. Although it was not necessary to put the PHOENIX SUN in drydock, a
17 survey of the vessel was undertaken and it was estimated that an expenditure of an
18 amount similar to that required for PHOENIX STAR would be necessary to bring the
19 vessel up to applicable standards.

20 146. This information was shocking to Plaintiff Phoenix Sun, given the
21 Defendants' valuation of the vessel PHOENIX SUN contained in the March 2011
22 Appraisal.
23

24 147. It was at this time that Plaintiff Phoenix Sun discovered that Defendants'
25 valuation of the vessel PHOENIX SUN was significantly overvalued.

1 148. In March 2013, Plaintiff Phoenix Sun was placed in receivership by
2 creditors, and the vessel sold for the purchase price of \$1,050,000.00.

3 149. Despite the fair market value determined by Defendants in the appraisal
4 report (FMV \$6,000,000.00 in the March 2011 Appraisal), the PHOENIX SUN sold
5 significantly below the Defendants' valuation.

6 150. As a result of the Defendants' gross overvaluation of the subject vessel
7 PHOENIX SUN, Plaintiff Phoenix Sun sustained a significant loss.

8 151. At the time Defendants prepared the March 2011 Appraisal, Defendants
9 knew or should have known that their representations regarding the value of the vessel
10 now known as the PHOENIX SUN were not true and correct in all material respects.

11 152. Based on the information provided by Defendants to Plaintiff
12 Vanguard/Plaintiff Vanship, Plaintiff Vanguard/Plaintiff Vanship did not have any reason
13 to suspect that Defendants' representations regarding the valuation of the vessel
14 PHOENIX SUN were not true and correct in all material respects.

15 153. As a result of Defendants' misrepresentations as to the valuation of the
16 vessel PHOENIX SUN, Plaintiff Warren, Plaintiff Vanguard/Plaintiff Vanship, Plaintiff
17 Remstoan, and Plaintiff Phoenix Sun overestimated the value of the vessel, and agreed
18 to purchase the vessel and/or invest a greater amount than they would have, had they
19 known the true value of the PHOENIX SUN.

20 154. Defendants breached the agreements with Plaintiff Vanguard/Plaintiff
21 Vanship by their misrepresentations regarding the value of the PHOENIX SUN.
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1 155. At all times relevant hereto, Plaintiff Vanguard/Plaintiff Vanship complied
2 with all terms and conditions required under the parties agreement.

3 156. As a direct and proximate result of Defendants' breach of the agreements,
4 Plaintiff Vanguard/Plaintiff Vanship, Plaintiff Remstoan, and Plaintiff Phoenix Sun have
5 been caused to incur significant costs, expenses and damages in excess of
6 \$10,000,000.00.
7

8 157. For the reasons described above, Defendants are liable to Plaintiff
9 Vanguard/Plaintiff Vanship, Plaintiff Remstoan, and Plaintiff Phoenix Sun in an amount
10 to be proven at trial but not less than \$10,000,000.00.
11

12 **COUNT III**

13 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

14 158. Plaintiffs repeat and reallege as though fully set forth herein each of the
15 allegations set forth in paragraphs 1 through 158.
16

17 159. Defendants had a duty to act in good faith when dealing with Plaintiffs in
18 the performance of their market valuation appraisals of the vessels pursuant to the
19 terms of the agreements, and Defendants had a duty to disclose the truth regarding
20 their performance of the market valuation appraisals and the representations as to value
21 that they made in the May 2008 Appraisal, February 2009 Appraisal, and March 2011
22 Appraisal.
23

24 160. As a result of Defendants' failure to perform the market valuation
25 appraisals of the vessels in accordance with generally accepted standards, and their

1 failure to disclose the true valuation of the vessels, Defendants breached their duty of
2 good faith and fair dealing to Plaintiffs.

3 161. As a direct and proximate result of Defendants' breach of their duty of
4 good faith and fair dealing, Plaintiffs have been caused to incur significant costs,
5 expenses and damages in excess of \$20,000,000.00.

6 162. For the reasons described above, Defendants are liable to Plaintiffs in an
7 amount to be proven at trial but not less than \$20,000,000.00.
8

9 **COUNT IV**

10 **NEGLIGENT MISREPRESENTATION**

11 163. Plaintiffs repeat and reallege as though fully set forth herein each of the
12 allegations set forth in paragraphs 1 through 163.

13 164. Defendants represented to Plaintiffs that they would perform the market
14 valuation appraisals of the vessels based on their knowledge, experience, expertise,
15 and research resources in the market in accordance with generally accepted standards,
16 and that they would adequately investigate the vessels and the market before rendering
17 their valuation of the vessels in accordance with generally accepted standards.
18

19 165. In the performance of their market valuation appraisals of the vessels,
20 Defendants had a duty to obtain and disclose true and accurate facts regarding the
21 vessels and the market, to take reasonable steps to avoid disseminating false
22 information to Plaintiffs, and to employ a reasonable degree of care in their performance
23 of the valuations.
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1 166. In the May 2008 Appraisal, February 2009 Appraisal, and March 2011
2 Appraisal, Defendants negligently made or caused to be made and represented to
3 Plaintiffs that such appraisals contained true and accurate facts regarding the vessels
4 and the market, and that they adequately investigated the vessels and the market in
5 performing the market valuation appraisals.

6 167. Defendants' misrepresentations as to their performance of the market
7 valuation appraisals and their valuations of the vessels were material to Plaintiffs'
8 decisions to purchase the vessels and/or invest in the shipping ventures for the agreed
9 upon purchase prices.

10 168. Defendants made the misrepresentations as to their performance of the
11 market valuation appraisals and their valuations of the vessels, without using
12 reasonable care in ascertaining the truth thereof, before making such representations to
13 Plaintiffs.

14 169. At the time Defendants made the misrepresentations, Defendants knew or
15 should have known that they were not accurate and not in accordance with generally
16 accepted standards.

17 170. Plaintiffs reasonably believed Defendants' representations to be true, and
18 relied upon such representations, to their detriment, in deciding to purchase the vessels
19 and/or invest in the shipping ventures.

20 171. Plaintiffs would not have purchased the vessels and/or invested in the
21 shipping ventures, nor would they have paid the purchase prices paid, had the truth
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1 regarding the Defendants' performance of the market valuation appraisals, and their
2 valuations of the vessels, been disclosed.

3 172. Plaintiffs discovered the representations regarding the performance of the
4 market valuation appraisals and the valuations of the vessels were negligent after
5 Plaintiffs purchased the vessels and/or invested in the shipping ventures.

6 173. As a direct and proximate result of Plaintiffs' justifiable reliance on
7 Defendants' negligent representations, Plaintiffs have been caused to incur significant
8 costs, expenses and damages in excess of \$20,000,000.00.

9 174. For the reasons described above, Defendants are liable to Plaintiffs in an
10 amount to be proven at trial but not less than \$20,000,000.00.

11
12 **COUNT V**

13 **NEGLIGENCE**

14 175. Plaintiffs repeat and reallege as though fully set forth herein each of the
15 allegations set forth in paragraphs 1 through 175.

16 176. Pursuant to the terms of the parties' agreements, Defendants were
17 obligated to perform the market valuation appraisals of the vessels based on their
18 knowledge, experience, expertise, and research resources in the market in accordance
19 with generally accepted standards, and to adequately investigate the vessels and the
20 market before rendering their valuation of the vessels in accordance with generally
21 accepted standards.
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1 177. Pursuant to Defendants' obligations under the parties' agreements,
2 Defendants owed Plaintiffs a duty to perform such obligations with reasonable care to
3 avoid damage to Plaintiffs.

4 178. Defendants failed to perform their obligations under the terms of the
5 agreements, by failing to exercise reasonable care in the performance of their market
6 valuation appraisals of the vessels.
7

8 179. Plaintiffs reasonably relied on Defendants' valuations of the vessels to
9 their detriment in deciding to purchase the vessels and/or invest in the shipping
10 ventures for the purchase prices paid.

11 180. Plaintiffs would not have purchased the vessels and/or invested in the
12 shipping ventures, nor would they have paid the purchase prices paid, had Defendants
13 performed their market valuation appraisals of the vessels with reasonable care.
14

15 181. Plaintiffs discovered that Defendants' negligently performed their market
16 valuation appraisals of the vessels after Plaintiffs purchased the vessels and/or invested
17 in the shipping ventures.

18 182. As a direct and proximate result of Defendants' negligence, Plaintiffs have
19 been caused to incur significant costs, expenses and damages in excess of
20 \$20,000,000.00.

21 183. For the reasons described above, Defendants are liable to Plaintiffs in an
22 amount to be proven at trial but not less than \$20,000,000.00.
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REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs demand judgment against the Defendants as follows:

A. Awarding Plaintiffs an amount to be proven at trial but not less than \$10,000,000.00 on Count I;

B. Awarding Plaintiffs an amount to be proven at trial but not less than \$10,000,000.00 on Count II;

C. Awarding Plaintiffs an amount to be proven at trial but not less than \$20,000,000.00 on Count III;

D. Awarding Plaintiffs an amount to be proven at trial but not less than \$20,000,000.00 on Count IV;

E. Awarding Plaintiffs an amount to be proven at trial but not less than \$20,000,000.00 on Count V;

F. Awarding Plaintiffs their attorneys' fees;

G. Awarding Plaintiffs their costs and disbursements; and

H. Awarding Plaintiffs such other and further relief as the Court shall deem just and proper.

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1 DATED this 30th day of November, 2015.

2 PREG O'DONNELL & GILLETT PLLC

3
4 By /s/ Rodney Q. Fonda

5 Rodney Q. Fonda, WSBA #6594

6 Attorneys for Plaintiffs T. F. Warren Group,
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